IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5261 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAUFKHAN YUSUFKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5261 of 2001

MR MR PRAJAPATI WITH MR HR PRAJAPATI for Petitioner No. 1

MRS HANSA PUNANI AGP for Respondents No. 1 to 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 11/12/2001

ORAL JUDGEMENT

The present petition has been filed by the the petitioner - detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act

of 1985') by the order dated 29/5/2001 passed by the Commissioner of Police, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the solitary offence registered against the detenu before North Prohibition Station vide CR No.1102 of 2001 for the offence punishable under Sections 66(1)(B), 65(E), 65(A), 81, 83 and 116(B) of Bombay Prohibition Act. The learned advocate for the petitioner has further submitted thereafter, the petitioner made a detailed representation to the concerned authorities on 29/6/2001, which has been received by the said authority on 30/6/2001, which is clear from the postal acknowledgment produced on page 25 of the compilation of this petition. The learned advocate for the petitioner has further submitted that the concerned authority has rejected the said representation on 2/7/2001, but the same has not been communicated to the petitioner immediately, but the authority vide his letter dtd.12/7/2001 informed the petitioner that his representation has been rejected the by State vide order dtd.2/7/2001. The petitioner has received the said letter on 21/7/2001. According to the learned advocate for the petitioner there is a delay in considering the representation and also there is a delay in communicating the said representation of the petitioner, which is unconstitutional. In support of his say, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under :-

"We would emphasisw that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in

the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

4. Since the detaining authority has not decided the representation of the petitioner and not communicated the decision of the representation of the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 29/5/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Raufkhan Yusufkhan Pathan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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